IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

WEDNESDAY, THE 23RD MAY 2007 / 2ND JYAISHTA 1929

CRL.A.No. 69 of 1999()

ST.1488/1997 of JUDL.MAGISTRATE OF FIRST CLASS, HARIPAD

.....

APPELLANT: COMPLAINANT:

VIJAYAN, S/O.MADHAVAN, CHEMPAKAPALLY, THARAYIL VEEDU, PUTHIYAVILA MURI, KANDALLUR VILLAGE.

BY ADV. SRI.S.SANTHOSH KUMAR

RESPONDENTS: ACCUSED & STATE:

---

1. GOPALAKRISHNAN, S/O. KESAVAN, KUNNUTHARAYIL VEEDU, PUTHIYAVILA MURI, KANDALLOOR VILLAGE.

2. THE STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.G.PRABHAKARAN FOR R1
SRI.S.KRISHNAKUMAR
PUBLIC PROSECUTOR SRI.P.RAVINDRA BABU FOR R2

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 23-5-2007 , THE COURT ON 23/05/2007 DELIVERED THE FOLLOWING:

K. Thankappan, J.

- -

Crl. A. No. 69 of 1999

- -

Dated this the 23rd day of May, 2007

JUDGMENT

Judgment in S.T.No.1488/97 on the file of the Court of the Judicial First Class Magistrate-I, Haripad is assailed in this appeal. The complainant/appellant filed the complaint under section 138 of the Negotiable Instruments Act alleging that the 1st respondent had borrowed an amount of Rs.60,000/- from him and in discharge of the said liability, he had given a cheque for Rs.60,000/- in favour of the appellant and when the cheque was presented for encashment, the same was dishonoured due to insufficiency of fund in the account of the 1st respondent. On receipt of intimation of dishonor of the cheque, a lawyer's notice was caused to the respondent demanding of the amount covered by the cheque. Since the amount was not paid by the 1st respondent, the complaint has been filed before the court. To prove the case against the 1st respondent, the appellant himself was examined as PW1 and the Manager of the bank was examined as PW2. Exts.P1 to P8 were marked on the side of the appellant. . After

closing the evidence of the prosecution, the 1st respondent was questioned under section 313 Cr.P.C. He denied the allegation. In his written statement he stated that he borrowed Rs.6,000/- from the appellant. After considering the entire evidence, the trial court acquitted the 1st respondent on the ground that the appellant had failed to establish his case beyond reasonable doubt by giving cogent and convincing evidence.

2. Heard learned counsel for the appellant and the learned Public Prosecutor.

3. The judgment of the trial court would show that the appellant had stated before the court that the cheque was for an amount of Rs.6,000/-. The above version is contrary to the averments contained in the complaint. In his 313 statement the case set up by the 1st respondent is that he had borrowed Rs.6,000/- from the appellant.

4. In the above circumstances, this Court is of the view that the learned Magistrate has not considered the evidence and had not perused the records. There is no finding entered by the trial court that the 1st respondent has not issued the cheque and the cheque was not signed by the 1st respondent.

5. In the above circumstances, this Court is of the view that the judgment under challenge is liable to be set aside and the matter has to be

remitted to the trial court for fresh consideration. Ordered accordingly. The trial court is directed to consider the matter afresh as per law from the stage of evidence. Both the appellant and the 1st respondent shall be given an opportunity to adduce additional evidence, if any, to substantiate their case.

The parties shall appear before the court below on 21-7-2007

K. Thankappan,
Judge.

K. Thankappan,J.

- - - - - - - - - - - - - - - -

Crl.A.69 of 1999

- - - - - - - - - - - - - - - -

Judgment
23-5-2007